

*Susan* 0001  
*cc Lynn*  
*10490054*

**Provo**

## CITY ATTORNEY'S OFFICE

**FAX**

COVER SHEET

**To:** Jim Allen, Steve Alder**Fax #:** 801/538-7440**Subject:** proposed order**Date:** 23 January 2007**Pages:** 5, including this**COMMENTS:****Jim:**

As we discussed, I'm faxing the proposed order for you consideration as it may pertain to mining.

If you see problems, could you contact me ASAP.

Thanks,



Camille

From ...

Camille S. Williams  
Assistant City Attorney  
351 West Center  
P.O. Box 1849  
Provo, Utah 84603

801-852-6148  
Fax: 801-852-6150  
email: cwilliams@provo.utah.gov

**CONFIDENTIALITY NOTICE**

As legally privileged and confidential information, the message contained in the facsimile transmission is intended only for the use of the addressee(s) named above. If the reader of this cover sheet is not an intended recipient or the employee or agent responsible for delivering the message to the intended recipient(s), you are hereby notified that any reading, dissemination, distribution, or copying of the message contained in this facsimile transmission is strictly prohibited. Anyone who receives this facsimile in error should notify us immediately by telephone and return the original message to us at the above address via the U.S. mail.

0001

**RECEIVED**

JAN 22 2007

**PROVO CITY  
ATTORNEY'S OFFICE**

Michael N. Zundel, Esq. (#3755)  
**PRINCE, YEATES & GELDZAHLER**  
A Professional Corporation  
City Centre I, Suite 900  
175 East 400 South  
Salt Lake City, UT 84111  
Telephone: (801) 524-1000

Attorneys for Richard W. Davis

**IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR  
UTAH COUNTY, STATE OF UTAH**

**RICHARD DAVIS,**

Plaintiff,

vs.

**GREG SPERRY, RED SLAB, LLC, JOHN  
L. VALENTINE, and PROVO CITY  
CORPORATION,**

Defendants.

**ORDER GRANTING RICHARD DAVIS'  
MOTION TO COMPEL INSPECTION OF  
PROPERTY AND TANGIBLE OBJECTS**

Consolidated Case No. 000403760  
(Judge Taylor)

**RED SLAB, LLC,**

Plaintiff,

vs.

**RICHARD DAVIS,**

Defendant (substituted as a  
Defendant for Defendants  
Design West, LLC, Loren  
Kapelow and Stephen  
Kapelow, deceased.

This matter having come before the Court on December 12, 2006, upon motion of Plaintiff, Richard Davis ("Davis"), requesting an order compelling Defendants Red Slab, LLC, and Provo City Corporation to allow Davis to enter upon the land at issue in this case and take away several tons of large rock lying upon the ground, for the purpose of testing the value and useability of the rock as decorative yard stone and/or cabinet countertops, as this may affect the value of the land and Davis's damage claims in this case; the Court having considered the papers and affidavits filed in support of and in opposition to the motion and the arguments and representations of counsel, and good cause appearing therefor, it is hereby

ORDERED, that Davis' motion is granted upon the following terms and with the following restrictions:

1. Davis or his agents may remove from the land at issue one pickup truck load of stone and two large boulders, each about 4 feet wide.
2. The only stone and boulders that may be removed are those that have already fallen to the canyon floor and are lying on the ground. Nothing may be taken from the sides of the canyon.
3. Davis or his agents may remove the stone or boulders described in this order by using a pickup truck and a trailer, but no other self propelled vehicles. He or his agents may enter the property one or two times on week days and non-holidays to remove the amount of stone and boulders allowed herein.

4. At least forty-eight hours prior to entering the property in connection with this sampling effort, Davis must give written notice to counsel for Provo City and Red Slab. Said notice may be given by facsimile or email.

5. Davis may use an electric or hydraulic lift, hoist and/or winch to lift the stone and boulders into or onto the pickup truck and/or trailer. He may also use hand tools.

6. Davis may not use a jackhammer in connection with this sampling.

7. Davis may not use a forklift in connection with this sampling.

8. In granting Davis' motion, the Court makes no ruling on whether any state or municipal regulations or ordinances apply to the sampling activities contemplated by this Order. The Court expects that Davis will comply with any regulations and ordinances which apply and that any dispute between Davis and Provo City or other governmental authorities as to the applicability of any such regulations or ordinances will be resolved through appropriate enforcement action by the proper governmental authority, in the ordinary course.

9. In making this Order, the Court is not issuing any kind of an injunction or ruling as to what Davis may or may not do with his property. This Order pertains only to the instant motion and the manner in which inspection and sampling may occur in connection with Davis' effort to adduce evidence relevant in this particular case.

10. This Order is without prejudice to subsequent motions Davis may wish to bring, or further sampling based on additional evidence of necessity.

DATED this \_\_\_\_\_ day of January, 2007.

BY THE COURT:

\_\_\_\_\_  
Honorable James R. Taylor  
District Court Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17 day of January, 2007, I served the foregoing by causing a true and correct copy thereof to be mailed, via United States Mail, postage prepaid, to the following:

Phillip E. Lowry, Esq.  
Howard, Lewis & Peterson  
120 East 300 North  
P.O. Box 1248  
Provo, Utah 84603

Steven F. Allred, Esq.  
584 S. State Street #F  
Orem, Utah 84058

Camille S. Williams  
Provo City Attorney's Office  
351 West Center Street  
Provo, UT 84603

G:\Mnz\MNZ Pleadings\5464.doc

\_\_\_\_\_  
